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May 11, 2006

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: July 26, 2004

Case Number: TSO-0132

This Decision concerns the eligibility of xxxxxxxxxxxxxxxx (the Individual) to possess an access authorization under the Department of Energy (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."^{1/} A Local Security Office denied the Individual's request for an access authorization pursuant to the provisions of Part 710. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the Individual's access authorization should not be granted.

I. Background

The Individual is employed by a contractor at a DOE facility. The Individual was charged with possessing an open container of an alcoholic beverage in 2000. DOE Exhibit (DOE Ex.) 1 at 2. In December 1993, he was charged with Driving While Intoxicated (DWI). *Id.* He was also charged with DWI in 1989 and November 1990 or 1991. *Id.* at 2. Because of these charges, he was evaluated by a DOE consulting psychiatrist. *Id.* The DOE consulting psychiatrist found that the Individual met diagnostic criteria for Alcohol Dependence in early partial remission as set forth in the Diagnostic and Statistical Manual of the American Psychiatric Association, 4th edition, Text Revision (DSM-IV-TR). *Id.* The DOE consulting psychiatrist opined that the Individual needed one or two years of moderately intense outpatient treatment, with maintenance of sobriety, to demonstrate adequate evidence of rehabilitation or reformation. DOE Ex. 3 at 10.

^{1/} Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a). Such authorization will be referred to from time to time in this Decision as access authorization or security clearance.

Because the derogatory information concerning the Individual had not been resolved, the Local Security Office obtained authority to initiate this administrative review proceeding. The Local Security Office then issued the Notification Letter to the Individual, citing the DOE consulting psychiatrist's diagnosis of Alcohol Dependence as derogatory information that created a substantial doubt as to the Individual's eligibility for an access authorization under 10 C.F.R. § 710.8(j) (Criterion J).^{2/}

Upon receipt of the Notification Letter, the Individual requested a hearing. The DOE transmitted the hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case. *See* 10 C.F.R. § 710.25(a), (b). I convened a hearing in this matter as prescribed by the DOE regulations. *See* 10 C.F.R. § 710.25(g).

At the hearing, the Individual was represented by an attorney. The Individual offered his own testimony as well as the testimony of a clinical psychologist. The Local Security Office presented one witness, the DOE consulting psychiatrist. The Local Security Office entered 10 exhibits into the record. The Individual entered 9 exhibits.

II. Standard of Review

Under Part 710, DOE may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility." 10 C.F.R. § 710.10(a). After a question concerning an individual's eligibility for an access authorization has been properly raised, the burden shifts to the individual who must come forward with convincing factual evidence that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." *See* 10 C.F.R. § 710.27(a).

In considering the question of the Individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the Individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors.

^{2/} Criterion J refers to information indicating that an individual has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j).

After consideration of all the relevant information in the record, I conclude that the security concerns raised by the derogatory information have not been mitigated. Consequently, it is my decision that the Individual's access authorization should not be granted.

III. Findings of Fact

The derogatory information concerning Criterion J centers on the Individual's diagnosis of Alcohol Dependence. The facts giving rise to the diagnosis and the diagnosis itself are not in dispute. Such a diagnosis always raises security concerns. In response to these concerns, however, the Individual maintains that he has changed his lifestyle and no longer drinks.

The Individual had three DWI arrests over a period of approximately five years. The last incident occurred in 1993. Because of the reported DWI arrests, the Local Security Office interviewed the Individual and concluded that he should be evaluated by a DOE consulting psychiatrist. In reaching this decision, the Local Security Office relied on the previous DWI arrests.

Subsequent to his 2003 interview with the Individual, the DOE consulting psychiatrist wrote a report on the Individual describing his findings. DOE Ex. 3. The report states that the DOE consulting psychiatrist examined the Individual and administered the Minnesota Multiphasic Personality Inventory-2 (MMPI-2). The Individual was also given a number of laboratory tests. The test results showed no alcohol or drug use. The laboratory tests did show an abnormally elevated Gamma GT liver enzyme level. DOE Ex. 3 at 6. Based upon the examination and his review of the DOE records, the DOE consulting psychiatrist determined that the Individual met five of the diagnostic criteria for "Alcohol Dependence" contained in the DSM-IV. *Id.* at 7-8. In the Report, he also opined that the Individual had not shown adequate rehabilitation or reformation, and he would recommend that the Individual have at least one or two years of abstinence and of moderately intensive outpatient treatment for the Individual to be considered rehabilitated or reformed. *Id.* at 9. Elaborating further, the DOE consulting psychiatrist indicated that moderately intensive outpatient treatment could consist of participation in Alcoholic Anonymous (AA), attending a meeting a few times a week. *Id.* at 8.

V. The Hearing

The Individual testified on his own behalf. The Individual disputed that he had ever been arrested for an open container of alcohol. Hearing Transcript (Hrg. Tr.) at 119. He stated that he received a citation. *Id.* at 120. The Individual stated that he was twenty years old when he received his first DWI. The second DWI, which occurred in 1991, was dismissed. Hrg. Tr. at 119. His third DWI, which occurred in 1993, resulted in fines and possibly community service. *Id.* The Individual stated that he would like to get into a treatment program. *Id.* at 128. He had tried one treatment program, but it was depressing and

repetitive. *Id.* at 129. He knows of an AA meeting that he would like to attend, but has not done so yet. *Id.* The Individual stated that he has been married for five years and purchased a new home. *Id.* at 122. He stated that his alcohol consumption has changed. *Id.* He last consumed an alcoholic beverage in July 2005. *Id.* at 124.

A clinical psychologist testified on the Individual's behalf. The psychologist met with the Individual twice and conducted two tests, the Personality Assessment Inventory (PAI) and the Substance Abuse Subtle Screening Instrument (SASSI). Hrg. Tr. at 81, 83. The psychologist also reviewed the DOE Psychiatrist's report. The psychologist is not the Individual's treating psychologist. The psychologist testified that the analysis of the PAI led to some concern that the Individual may have a problem with alcohol. However, he continued that the SASSI suggested that the problem was in the past. *Id.* at 84. The Psychologist discussed the Individual's elevated Gamma GT Liver Enzyme level,^{3/} but it was not of concern to him, because it was not abnormally high, just slightly elevated. *Id.* at 95-100. He continued that different laboratories have different levels for their tests. The results of the laboratory tests that the Psychologist performed on the Individual were all within the normal range. *Id.* The Psychologist testified that he advised the Individual to get treatment for his possible alcohol problem. *Id.* at 108. He met with the Individual for a second time two days before the hearing and reiterated that he should get treatment. At that time, the Individual told him that he had attended one treatment facility, but it was not a proper fit for him. The Psychologist testified that he told the Individual he should seek out an Alcoholic Anonymous (AA) meeting to attend. *Id.* The Psychologist concluded that at the present time the Individual does not have a problem with alcohol. *Id.* at 105. He continued that the Individual would be "well advised to say, I'm not going to drink at all." *Id.*

At the hearing, the DOE Psychiatrist reiterated his diagnosis. Pursuant to the DSM-IV-TR, for someone to be diagnosed as Alcohol Dependent, he must meet at least three criteria from a list of seven criteria. Hrg. Tr. at 74. First, he determined that the Individual met Criterion 1 as evidenced by his increasing tolerance to alcohol. Hrg. Tr. at 73. Second, he determined that the Individual met Criterion 4 as shown by his attempt to stop drinking alcohol or reduce the amount he consumed and his attendance at a treatment facility and AA. Hrg. Tr. at 74; DOE Ex. 3 at 7-9. He continued that the Individual met Criterion 7 because he continued using alcohol despite the fact that his physician told him he had an ulcer and that drinking alcohol made it worse. Hrg. Tr. at 74; DOE Ex. 3 at 7. Finally, the DOE Psychiatrist concluded that the Individual met Criteria 2 and 3 as a result of his alcohol related legal problems. DOE Ex. 3 at 7. The DOE consulting psychiatrist did state that he would change his diagnosis from Alcohol Dependence, early partial remission, to Alcohol Dependence, sustained partial remission. Hrg. Tr. at 137. He concluded that he

^{3/} An elevated Gamma GT Liver Enzyme Level can indicate that an individual has recently consumed alcoholic beverages, usually in significant amounts.

believes it would be hazardous for the Individual to consume alcohol, even in moderation. *Id.* at 138. The DOE Psychiatrist stated that the Individual appears to be heading in the right direction. He has had some treatment; he has had times of sobriety; he has cut down on his consumption of alcohol. *Id.* at 139. The DOE Psychiatrist concluded that the Individual needs to demonstrate to himself and DOE that he can be abstinent for one year. *Id.* He believes that getting support for that, from a treatment facility or AA, would be crucial. *Id.*

V. Findings and Conclusions

After reviewing the expert psychiatric testimony presented in this case as well as the other evidence contained in the record, I find that the Individual is Alcohol Dependent, as diagnosed by the DOE Psychiatrist. Even the Individual's psychologist opined that the Individual should not consume alcoholic beverages. Hrg. Tr. at 105. This diagnosis raises a security concern. I also find that, although the Individual is on the road to rehabilitation or reformation, he has not shown adequate evidence of rehabilitation or reformation. I was impressed with the candid testimony of the Individual. His family life appears to be established with his marriage of five years and his purchase of a new home. However, he has not attended AA on a regular basis nor has he been abstinent. Both his psychologist and the DOE Psychiatrist recommended that he maintain sobriety and attend AA or some other type of outpatient treatment facility.

In sum, I find the expert testimony of the DOE consulting psychiatrist and the Individual's psychologist convincing. Consequently, I find that concerns raised by the Individual's diagnosis of alcohol dependence were not mitigated at the time of the hearing.

IV. Conclusion

Upon consideration of the record in this case, I find that there is evidence that raises a doubt regarding the Individual's eligibility for a security clearance. However, as explained in this Decision, I find the Individual has not mitigated the DOE's Criterion J concerns regarding his alcohol dependence. I am therefore unable to find that restoring the Individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the Individual's access authorization should not be restored.

Janet R. H. Fishman
Hearing Officer
Office of Hearings and Appeals

Date: May 11, 2006